

QUINN EMANUEL URQUHART & SULLIVAN, LLP

BOIES SCHILLER FLEXNER LLP
Mark C. Mao (CA Bar No. 236165)
mmao@bsflp.com
44 Montgomery Street, 41st Floor
San Francisco, CA 94104
Telephone: (415) 293 6858
Facsimile: (415) 999 9695

SUSMAN GODFREY L.L.P.
William Christopher Carmody (pro hac vice)
bcarmody@susmangodfrey.com
Shawn J. Rabin (pro hac vice)
srabin@susmangodfrey.com
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Telephone: (212) 336-8330

MORGAN & MORGAN
John A. Yanchunis (pro hac vice)
jyanchunis@forthepeople.com
Ryan J. McGee (pro hac vice)
rmcgee@forthepeople.com
201 N. Franklin Street, 7th Floor
Tampa, FL 33602
Telephone: (813) 223-5505

Attorneys for Plaintiffs; additional counsel listed in signature blocks below

QUINN EMANUEL URQUHART &
SULLIVAN, LLP
Andrew H. Schapiro (*pro hac vice*)
andrewschapiro@quinnemanuel.com
191 N. Wacker Drive, Suite 2700
Chicago, IL 60606
Telephone: (312) 705-7400
Facsimile: (312) 705-7401

Stephen A. Broome (CA Bar No. 314605)
stephenbroome@quinnemanuel.com
Viola Trebicka (CA Bar No. 269526)
violatrebicka@quinnemanuel.com
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100

Diane M. Doolittle (CA Bar No. 142046)
dianedoolittle@quinnemanuel.com
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
Telephone: (650) 801-5000
Facsimile: (650) 801-5100

Attorneys for Defendant; additional counsel listed in signature blocks below

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated.

Plaintiffs,

V.

GOOGLE LLC,
Defendant

Case No. 5:20-cv-03664-LHK-SVK

**JOINT SUBMISSION IN RESPONSE TO
DKTS. 238, 247 RE: SEALING PORTIONS
OF AUGUST 12, 2021 HEARING
TRANSCRIPT**

Referral: Hon. Susan van Keulen, USMJ

1 August 25, 2021

2 Submitted via ECF

3 Magistrate Judge Susan van Keulen
4 San Jose Courthouse
5 Courtroom 6 - 4th Floor
280 South 1st Street
5 San Jose, CA 95113

6 Re: Joint Submission in Response to Dkts. 238, 247 re: Sealing Portions of August 12,
7 2021 Hearing Transcript
Brown v. Google LLC, Case No. 5:20-cv-03664-LHK-SVK (N.D. Cal.)

8 Dear Magistrate Judge van Keulen:

9 Pursuant to Your Honor's August 11, 2021 Order on Google's Administrative Motion to Seal
10 Courtroom for August 12, 2021 Discovery Hearing (Dkt. 238), and August 13, 2021 Stipulation and
11 Order Authorizing Release of August 12 Hearing Transcript (Dkt. 247), Plaintiffs and Google LLC
12 ("Google") jointly submit this statement regarding sealing portions of the August 12, 2021 hearing
13 transcript.

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1 Google respectfully seeks to seal the following portions of the August 12, 2021 Hearing
 2 Transcript (“Transcript”), which contain Google’s confidential and proprietary information regarding
 3 highly sensitive features of Google’s internal systems and operations that Google does not share
 4 publicly, including: the various types of Google’s internal data structures, identifiers and their
 5 proprietary functions, as well as plaintiff health information. This Court has previously sealed the
 6 same or substantively similar information, including in Dkt. Nos. 143, 152, 160, 172, 174, 183, 190,
 7 197, 226, 238, 240. This information is highly confidential and should be protected.

8 This Administrative Motion pertains to the following information contained in the Transcript:

9 Document	10 Portions to be Filed Under Seal	11 Party Claiming Confidentiality
August 12, 2021 Hearing Transcript	Portions Highlighted in Yellow at 12:22-24; 14:3; 53:23	Google

12 The parties conferred on the proposed redactions to the Transcript. Plaintiffs **support** and
 13 **jointly move for** sealing of the two-word redactions at Tr. 53:23. Plaintiffs take **no position** but do
 14 **not oppose** sealing the proposed redactions at Tr. 12:23-24 Tr. (starting with “we”) and 14:3.
 15 Plaintiffs **disagree** with the redactions at Tr. 12:22-23 (from “how” through “content”). Plaintiffs will
 16 not oppose the motion.

17 **I. LEGAL STANDARD**

18 The common law right of public access to judicial records in a civil case is not a constitutional
 19 right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978)
 20 (noting that the “right to inspect and copy judicial records is not absolute” and that “courts have
 21 refused to permit their files to serve as reservoirs of . . . sources of business information that might
 22 harm a litigant’s competitive standing”). The right to access is further diminished where, as here, a
 23 party seeks to prevent the disclosure of information discussed during a hearing on a non-dispositive
 24 discovery motion; rather than the more stringent “compelling reasons” standard, a party seeking to
 25 seal materials in these circumstances must make only a “particularized showing” of “good
 26 cause.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178–80 (9th Cir. 2006). A “strong
 27 presumption of access” does **not** apply to sealed discovery documents attached to non-dispositive
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1 motions; a “party seeking disclosure must present sufficiently compelling reasons why the sealed
 2 discovery document should be released.” *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307
 3 F.3d 1206, 1213 (9th Cir. 2002). Sealing is appropriate when the information at issue constitutes
 4 “competitively sensitive information,” such as “confidential research, development, or commercial
 5 information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at *4 (N.D.
 6 Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002)
 7 (acknowledging courts’ “broad latitude” to “prevent disclosure of materials for many types of
 8 information, including, but not limited to, trade secrets or other confidential research, development, or
 9 commercial information”).

10 **II. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE”
 11 STANDARD AND SHOULD ALL BE SEALED**

12 Although the materials that Google seeks to seal here easily meet the higher “compelling
 13 reasons” standard, the Court need only consider whether these materials meet the lower “good cause”
 14 standard. Courts have repeatedly found it appropriate to seal documents that contain “business
 15 information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-99. Good
 16 cause to seal is shown when a party seeks to seal materials that “contain[] confidential information
 17 about the operation of [the party’s] products and that public disclosure could harm [the party] by
 18 disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014
 19 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive
 20 standing may be sealed even under the “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v.*
 21 *Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information
 22 “is appropriately sealable under the ‘compelling reasons’ standard where that information could be
 23 used to the company’s competitive disadvantage”) (citation omitted).

24 Here, the Transcript comprises confidential information regarding highly sensitive features of
 25 Google’s internal systems and operations that Google does not share publicly. Specifically, this
 26 information provides details related to the various types of Google’s internal data structures, internal
 27 identifiers and their proprietary functions, as well as plaintiff health information. Such information
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1 reveals Google's internal strategies, system designs, and business practices for operating and
 2 maintaining many of its important services while complying with legal and privacy obligations.

3 Public disclosure of the above-listed information would harm Google's competitive standing it
 4 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 5 Google's proprietary systems, strategies, designs, and practices to Google's competitors. That alone is
 6 a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-
 7 02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google's motion to seal certain
 8 sensitive business information related to Google's processes and policies to ensure the integrity and
 9 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
 10 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because
 11 "disclosure would harm their competitive standing by giving competitors insight they do not have");
 12 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting
 13 motion to seal as to "internal research results that disclose statistical coding that is not publically
 14 available").

15 Moreover, if publicly disclosed, malicious actors may use such information to seek to
 16 compromise Google's internal data structures and internal identifier systems. Google would be
 17 placed at an increased risk of cyber security threats, and data related to browsing of users could
 18 similarly be at risk. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal.
 19 Sept. 25, 2013) (sealing "material concern[ing] how users' interactions with the Gmail system affects
 20 how messages are transmitted" because if made public, it "could lead to a breach in the security of the
 21 Gmail system"). The security threat is an additional reason for this Court to seal the identified
 22 information. The information Google seeks to redact, including internal data structures, internal
 23 identifiers and their functionalities, is the minimal amount of information needed to protect its internal
 24 systems and operations from being exposed to not only its competitors but also to nefarious actors
 25 who may improperly seek access to and disrupt these systems and operations. The information also
 26 includes plaintiff health information that should remain private and confidential. The "good cause"
 27 rather than the "compelling reasons" standard should apply but under either standard, Google's
 28 sealing request is warranted.

1 **III. CONCLUSION**

2 For the foregoing reasons, Google respectfully requests that the Court seal the identified portions
 3 of the Transcript.

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5 Respectfully,

6 QUINN EMANUEL URQUHART &
 7 SULLIVAN, LLP

8 /s/ Andrew H. Schapiro

9 Andrew H. Schapiro (admitted *pro hac vice*)
 andrewschapiro@quinnmanuel.com
 10 191 N. Wacker Drive, Suite 2700
 Chicago, IL 60606
 Tel: (312) 705-7400
 11 Fax: (312) 705-7401

12 Stephen A. Broome (CA Bar No. 314605)
 sb@quinnmanuel.com

13 Viola Trebicka (CA Bar No. 269526)
 violatrebicka@quinnmanuel.com
 14 865 S. Figueroa Street, 10th Floor
 Los Angeles, CA 90017
 Tel: (213) 443-3000
 15 Fax: (213) 443-3100

16 Diane M. Doolittle (CA Bar No. 142046)
 dianedoolittle@quinnmanuel.com

17 555 Twin Dolphin Drive, 5th Floor
 Redwood Shores, CA 94065
 Telephone: (650) 801-5000
 19 Facsimile: (650) 801-5100

20 Jomaire A. Crawford (admitted *pro hac vice*)
 jomairecrawford@quinnmanuel.com

21 51 Madison Avenue, 22nd Floor
 New York, NY 10010
 22 Telephone: (212) 849-7000
 Facsimile: (212) 849-7100

23 Josef Ansorge (admitted *pro hac vice*)
 josefansorge@quinnmanuel.com

24 Carl Spilly (admitted *pro hac vice*)
 carlspilly@quinnmanuel.com
 25 1300 I Street NW, Suite 900
 Washington D.C., 20005
 Tel: (202) 538-8000
 27 Fax: (202) 538-8100

28 Jonathan Tse (CA Bar No. 305468)
 ionathantse@quinnmanuel.com

6 BOIES SCHILLER FLEXNER LLP

7 /s/ Alexander P. Frawley

8 Mark C. Mao (CA Bar No. 236165)
 mmao@bsflp.com
 9 Sean Phillips Rodriguez (CA Bar No.
 262437)
 srodriguez@bsflp.com
 10 Beko Reblitz-Richardson (CA Bar No.
 238027)
 brichardson@bsflp.com
 11 44 Montgomery Street, 41st Floor
 San Francisco, CA 94104
 Tel: (415) 293 6858
 12 Fax: (415) 999 9695

13 James W. Lee (*pro hac vice*)
 jlee@bsflp.com

14 Rossana Baeza (*pro hac vice*)
 rbaeza@bsflp.com
 15 100 SE 2nd Street, Suite 2800
 Miami, FL 33130
 Tel: (305) 539-8400
 16 Fax: (305) 539-1304

17 William Christopher Carmody (*pro hac
 vice*)

18 bcarmody@susmangodfrey.com

19 Shawn J. Rabin (*pro hac vice*)
 srabin@susmangodfrey.com

20 Steven Shepard (*pro hac vice*)
 sshepard@susmangodfrey.com

21 Alexander P. Frawley (*pro hac vice*)
 afrawley@susmangodfrey.com

22 SUSMAN GODFREY L.L.P.
 1301 Avenue of the Americas, 32nd Floor
 New York, NY 10019
 Tel: (212) 336-8330

23 Amanda Bonn (CA Bar No. 270891)
 abonn@susmangodfrey.com

24 SUSMAN GODFREY L.L.P.
 1900 Avenue of the Stars, Suite 1400
 Los Angeles, CA 90067

1 50 California Street, 22nd Floor
2 San Francisco, CA 94111
3 Tel: (415) 875-6600
4 Fax: (415) 875-6700

Attorneys for Defendant Google LLC

Tel: (310) 789-3100

John A. Yanchunis (*pro hac vice*)
jyanchunis@forthepeople.com
Ryan J. McGee (*pro hac vice*)
rmcgee@forthepeople.com
MORGAN & MORGAN, P.A.
201 N Franklin Street, 7th Floor
Tampa, FL 33602
Tel: (813) 223-5505
Fax: (813) 222-4736

7 Michael F. Ram (CA Bar No. 104805)
8 mram@forthepeople.com
9 MORGAN & MORGAN, P.A.
10 711 Van Ness Avenue, Suite 500
11 San Francisco, CA 94102
12 Tel: (415) 358-6913

Attorneys for Plaintiffs

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16
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ATTESTATION OF CONCURRENCE

I am the ECF user whose ID and password are being used to file this Joint Submission. Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in the filing of this document.

Dated: August 25, 2021

Andrew H. Schapiro
Counsel on behalf of Google LLC